IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9259 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GHUGHABHAI BHOJABHAI BHARWAD

Versus

DISTRICT MAGISTRATE

Appearance:

MR YS LAKHANI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 18/02/98

By this application under Article 226 of the Constitution of India, the petitioner who is under detention calls in question the legality and validity of the detention order dated 27th September, 1997, passed by the District Magistrate for the district of Rajkot, invoking his powers under section 3(2) of the Gujarat Prevention of Anti Social Activities Act (for short "the Act").

2. The facts which led the petitioner to prefer this

application may in brief be stated. The District Magistrate, Rajkot was having the information that the petitioner was a headstrong person and by his several criminal activities, he was terrorising the people and thereby disturbing the public order. When he made detailed inquiry, examining the records of the Police Stations under him, he could note that six complaints were lodged with Jasdan Police Station. As per the allegations, in those complaints, the petitioner had committed offences punishable under section 307, 325, 323, 504, 143, 147, 148, 149 of the I.P.C. and sections 3 (1) (X) of the S.C. & S.T. (Prevention of Atrocities) Act. He therefore thought it wise to plunge into deep. After careful study, he knew that the petitioner was a head-strong person i.e. a tartar & decimator and by different criminal activities, he was terrorising the people. He was extorting money, causing injuries and/or causing damage to the properties. By diabolism, he used to cause the people to bend his way. His hellish and infernal activities disturbing public order and spreading pandemonium were going berserk. No one was, therefore, ready to come forward and state against him. After a great persuation and when assurance was given that the facts about them disclosing their identity would be kept secret, some of the witnesses have under great tension stated against the petitioner. After a deep inquiry, the District Magistrate found that to curb the anti-social, subversive and chaotic activities of the petitioner, unspeakable diabolism terrorising the society, and upsetting the public order and leading to anarchy, ordinary law was falling short and was sounding dull. The only way out to hold him in kittle was to detain him under the Act. He, therefore, passed the impugned order, consequent upon the same, the petitioner came to be arrested and at present, is in custody.

3. On behalf of the petitioner, challenging the impugned order, it is submitted that the order in question is passed after a great delay, as a result, the continuous detention has been rendered illegal. There was no justification for the authority passing the detention order withholding opportunity, exercising the privilege under Sec.9(2) of the Act. The detaining authority ought to have disclosed the particulars of the witnesses whose statements were recorded in support of the order passed. No doubt, under Section 9 of the Act, the authority has the privilege, but that is to be exercised judiciously, and not arbitrarily or capriciously so as to deprive the detenu of his right to have effective representation. As the particulars were not given, the petitioner was deprived of his right to

have the effective representation against the order. The instances about the offences noted in the order were not sufficient to brand him a dangerous person or to form a reasonable belief that maintenance of public order was adversely affected. The statements recorded are vague and necessary particulars when wanting the order is bad in law and is liable to be quashed.

4. Mr.U.R.Bhatt, the learned APP has vehemently refuted the allegations made, submitting that there is no delay on the part of the authority passing the order of detention, promptly order was passed and in the public interest, certain facts & particulars are withheld. As both later on confined to the only point, I will not dwell upon other points.

5. In this case, the last offence against the petitioner is registered on 29th July, 1996 while the impugned order is passed on 27th September, 1997. There is, thus, delay of about one year and two months months. Whether such delay is fatal to the case of the other side is the point posed before me for consideration. It is made crystal clear by the Apex Court in the case of Pradeep Nilkant Paturkar vs. S. Ramamurthi and others AIR 1994 S.C. 656 that if the detention order is passed after a long delay from the last offence registered or the statements of the witnesses lastly recorded, the order of detention on the ground of delay is required to be set aside, if the delay prejudices the detenu. It is also made clear that the delay ipso facto in passing an order of detention after the incident is fatal to the detention of a person or in certain cases, delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority. In the case before the Supreme Court, about 5 months and 8 days after the last registration of the offence and 4 months after the statements which came to be recorded last, the detention order was passed and so on the grounds of delay, the detention order was quashed and the detention order was ordered to be sed aside by holding that the delay had prejudiced the detenu's rights.

6. It may be stated that the delay in all cases will not be fatal. It all depends upon the facts and circumstances of each case. It is serious or corrigible, on the length of the gap, short or long, has to be determined on the facts and circumstances appearing in that particular case. In the case on hand, as per the statement made before him, last complaint came to be registered on 21st November, 1996 and thereafter the

impugned order came to be passed on 27th September, 1997. The order is, therefore, passed about ten months after the last complaint came to be recorded. Ordinarily, when the detention is sought to be made, the only way out for the authority will be to be quick in passing the order so that the people at large suffering hardship and feeling insecured can be made free, and nefarious activities of the person can promptly be curbed. If there is delay, the same has to be explained failing which necessary assumption in favour of the detenu will arise. In this case, no doubt, the Police Commissioner has, for reasons best known to him, abstained from filing the affidavit. When that is the case, I am entitled to infer every thing against the case of the other side i.e. the detaining authority. It can be assumed that in fact, there was no justification to pass order late. It may be that though there was no just cause to pass the impugned order, the authority might have been compelled to pass the order. In view of the above stated position therefore, the order cannot be allowed to stand.

7. For the aforesaid reasons, this petition is allowed. The order of detention passed on 27th September, 1997 by the District Magistrate, Rajkot City, is hereby quashed and set aside and the petitioner-detenu is ordered to be set at liberty forth with, if not required in any other case. Rule accordingly made absolute. Writ to be sent to Jailor, Baroda Jail.

Amp/- -----